IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.2663 of 1999

1. K.Vallai Swamy
2. A.Matheswaran
3. K.Ramamurthy
4. M.Thangavelu
5. K.A.Ramaswamy
6. P.Santharaj
7. R.Boovaragavan ..... Petitioners

-Vs-

1. The Government of Tamil Nadu
rep. by the Commissioner and
Secretary to Government
Department of Education
Science and Technology
Fort. St.George, Chennai 9.

2. The Director of Technical Education
Guindy, Chennai 600 024.

3. The Principal
The Erode Institute of Technology
(Govt. aided Institution)
Kavindapadi, Erode District ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of declaration, as stated therein.

For Petitioners : Mr.K.Srinivasamurthy

For Respondents : Mr.V.R.Rajasekar
Special Government Pleader
for R1 and R2

No appearance for R3.

:ORDER
Heard the learned counsel appearing for the parties.

2. The petitioners in this writ petition have prayed for a direction to the respondents to give the benefit of up-gradation as Associate Lecturer (Now re-designated as Lecturer) on completion of the qualifying services as per G.O.Ms.No.1146 dated 25.11.1992 and to further upgrade the petitioners as Senior Lecturers on completion of 10 years of service.

3. The petitioners were recruited as Instructors in Engineering subjects and they are all Diploma holders. In 1981, the Government has issued G.O.Ms.No.721 dated 28.04.1981 indicating that the Instructors who were degree holders would be upgraded as Associate Lecturers on completion of three years service and Instructors who were diploma holders would be so upgraded on completion of 10 years. The validity of such G.O was challenged by some of the diploma holders contending that such diploma holders should be upgraded as Associate Lecturers on completion of five years of service as Instructors. The aforesaid contention was accepted by Justice Srinivasan,J., as His Lordship then was and the Government Order was modified and a direction was issued to the effect that the diploma holders on completion of five years as Instructors should be upgraded as Associate Lecturers and after completion of two years they became equivalent to degree holders. Such decision of the learned Single Judge, challenged in appeal by the Government, was confirmed in W.A.No.184 of 1990, disposed of on 27.02.1990 . Subsequently, the Government issued G.O.Ms.No.1146 dated 25.11.19 92 Education dated 28.04.1981, wherein G.O.Ms.No.721 Education dated 28.04.1981 was amended. It is necessary to quote the amended provision.
"(1) Instructors in Engineering Subjects with B.E. or other equivalent degree having three years of service as Instructors and the Instructors in Engineering subjects with Diploma having five years of service as Instructors, which includes three years of services as Instructors and two years of service in the post of Workshop Instructors, Draughtsman and other equal cadre posts in the Polytechnic and Special Institutions be upgraded as Associate Lecturer, in the scale of pay of Rs.700-1300 in the respective branches in the polytechnics and Special Institutions."

4. The contention of the petitioners in respect of the above said decision and subsequent Government Order, the benefit has not been given to the petitioners as result of which many of their Juniors who were their students have stolen a marching over them and getting more salary and occupying their possession.

5. Even though counter has not been filed, the learned Special Government Pleader (Education) has invited my attention to G.O.Ms.No.1081 dated 19.08.1989. In para-4 of the Government Order, it is indicated "The recruitment to Instructor(Teacher) Cadre in Polytechnics and Special Diploma Institutions will be discontinued. However, the existing Instructors shall be promoted as Associate Lecturers as and when they acquire the required Degree qualification."

6. On the basis of this, it is submitted that the effect of G.O.Ms.7 21 dated 28.04.1981 has been taken away and only persons having degree qualification can be promoted as Associate Lecturers as and when they acquired degree qualifications.

7. First of all, there is no reference in the aforesaid G.O., to the earlier G.O., which was issued in the year 1981. More over, even assuming that G.O., has the effect of quilting down the effect of giving promotion to effect Instructors having degree qualification. The issuance of subsequent G.O in the year 1982 must be taken to prove the effect of having such privilege upon the instructors who were having mere diploma and not having degree qualification. Therefore, if the logic of implied modification of the G.O issued in the year 1981 is accepted by extending some logic. It should be taken that 1992 G.O have the effect of modifying 1989 G.O. More over, it appears that the learned single Judge of this Court after considering the effect of the G.O dated 19.08.1989 and after relying upon the G.O.Ms.No.1145 dated 25.11.1992 has directed that such benefit given to the Instructors who have completed five years of service. I see no reason to differ from the learned Single Judge decision.

8. For the aforesaid reasons, I allow the writ petition and direct that the petitioners shall be deemed to have become Associate Lecturers on completion of five years of service as instructor and shall be now re-designated as Lecturers and shall be re-designated as Senior Lecturers on completion of 10 years from that date.

9. The financial benefit shall be given to the petitioners within a period of four months from the date of communication of this order. There shall be no order as to costs.

Index:Yes
Internet:Yes
ksr
To

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rep. by the Commissioner and
Secretary to Government
Department of Education
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Fort. St.George, Chennai 9.

2. The Director of Technical Education
Guindy, Chennai 600 024.